

MINUTES
TOWN OF EDGEWOOD
SPECIAL COUNCIL MEETING – MAY 28, 2008 @ 6:30 P.M.
EDGEWOOD COMMUNITY CENTER - #27 E. FRONTAGE ROAD

1. CALL TO ORDER.

Mayor Stearley called the meeting to order at 6:30 P.M.

All Councilors were present with the exception of Councilor Hill.

Also present was Ms. Karen Mahalick, Planning & Zoning Manager, Ms. Estefanie Muller, Acting Administrator Clerk-Treasurer, and Mr. Marcus Rael, Town Attorney.

2. PLEDGE OF ALLEGIANCE.

3. APPROVAL OF THE AGENDA.

MOTION: Councilor Felton made a motion to approve the Agenda.
Councilor Abrams seconded the motion.

VOTE: Councilor Simmons voted aye. Councilor Felton voted aye.
Councilor Abrams voted aye. The motion carried.

4. PUBLIC HEARING.

Quasi Judicial Procedure: Certification that Public Notice of this Meeting has been posted as required: This public hearing is continued from the Council Meeting of May 7, 2008.

Ms. Mahalick certified that public notice of this meeting had been posted as required.

This case is being heard under provisions required by the New Mexico Court of Appeals intended to protect the rights of all parties and their witnesses and the swearing in of all parties giving testimony. The affected parties will have the right to cross-examine persons giving testimony.

X. Appeal of the Remand of the Planning & Zoning Commission approval of Final Plat for Phase I for Pueblo Artesanos.

Confirmation of no conflict of interest or ex-parte communication.

Councilor Abrams stated that he had no conflict of interest or ex-parte communication.

Councilor Felton stated that he had no conflict of interest but that he was in receipt of an email from Mr. Jensen in support of the process.

Councilor Felton stated that the email did in no way attempt to sway his decision.

Councilor Simmons stated that she had no conflict of interest but that she was also in receipt of the email from Mr. Jensen.

Mayor Stearley stated that he had no conflicts of interest or ex-parte communication. Mr. Rael asked if anyone had an objection to the email that Mr. Jensen sent to the Council members. There were no objections.

Mr. Rael swore in all parties at this time.

Mr. Rael stated that this was an appeal on a decision that was made by the Planning & Zoning Commission. This stems from a remand of the application for Pueblo Artesanos Subdivision Preliminary Plat Approval to the Planning & Zoning Commission to determine the following issues:

1. Whether Rory Road was a public or private easement and also whether or not it is a private or exclusive easement.
2. Whether Rory Road was intended to serve all lots contained in historic Tract 3 of the Lands of Hill or Tract 3E.

Mr. Rael stated that on remand the Commission decided that the easement served all the lots and was not an exclusive easement. Mr. Rael stated that the following conditions were placed on the approval of the Plat.

1. Prior to recording of the Final Plat, Rory Road shall be brought into compliance with the Subdivision Ordinance No. 2005-14.
2. The application comply with all conditions of approval with the findings of the November 5, 2007 Plat.

Mayor Stearley clarified that the pavement would include the entirety of Rory Road.

Mr. Rael stated that Mr. and Mrs. Russell are the only ones who have standing in this appeal.

Mr. Rael stated that the grounds for this appeal are as follows:

1. The Planning and Zoning Commissions approval violated Sections 10-A –1B and 10-A-3E of the Town of Edgewood’s Ordinances.
2. The residents of Pueblo Artesanos are bound by Rory Road Covenants.
3. Approval is a “Taking” by the Town of Edgewood and is subject to inverse condemnation.

Mr. Rael stated that the Russell’s had also submitted a lengthy addendum but that he was asking the Town not to consider it because it is not something the Town has authority over.

Mr. Rael asked for testimony from Mrs. Russell

Mrs. Russell discussed her reasons for the appeal and presented testimony and evidence to support her appeal.

Mr. Rael asked Mrs. Russell a series of questions regarding road maintenance.

Mrs. Russell stated that it was her impression that this road was not a throughway.

Mr. Rael asked Mrs. Russell about her understanding of the easement.

Mrs. Russell stated that it was her understanding that it is a private easement.

Mr. Rael asked Mrs. Russell about road maintenance agreements and homeowners associations.

Mrs. Russell stated that she did not have nor was she aware of either.

Mr. Rael asked a series of question regarding the burden of improving the road.

Mr. Rael asked Mrs. Russell to clarify which portion of her property was being taken.

Mrs. Russell pointed to the portion on the map that included the easement.

Mr. Rael asked Mrs. Russell to describe the solution that was presented after the April 7, 2008 Meeting.

Mrs. Russell discussed the solution, as she understood it.

Mr. Rael asked if there were any questions for Mrs. Russell.

Mayor Stearley asked if this was a private road if that would make a difference in her position.

Mrs. Russell discussed her position.

Councilor Felton asked about the maintenance costs and who had paid.

Mrs. Russell stated that she had not to date paid any fees towards road maintenance.

Councilor Simmons asked about a homeowners association.

Mrs. Russell stated that there was not one at this time.

Mr. Rael asked for testimony from Mr. Russell.

Mr. Russell discussed his support for his wife, this process and the Council.

Mr. Russell stated that he was hopeful that this would end with a decision that would satisfy everyone.

Mr. Rael asked if Mr. Russell was aware of the easement that passed through his property.

Mr. Russell stated that he was out of town at the time they purchased their property.

Mr. Rael asked if Mrs. Russell had anymore evidence to present at this time. Mrs. Russell presented a packet of additional information to Mr. Rael.

Mr. Rael asked for testimony from Mr. Campbell at this time.

Mr. Campbell discussed the history of this issue.

Mr. Campbell discussed access to this land.

Mr. Campbell discussed the restrictive covenants that are on file in Santa Fe County.

Mr. Campbell discussed private easement vs. public easement and exclusivity.

Mr. Campbell discussed maintenance issues being shared by all landowners proportionally.

Councilor Simmons asked about the process to abandon an easement.
Mr. Rael discussed the different ways an easement can be abandoned but that there had not been an attempt to abandon the easement to date.
Councilor Felton asked questions about the 2005 Plat and the problems with the question of who is to maintain the road.

Mr. Campbell discussed maintenance and homeowners associations.

Mr. Rael stated that the Town has not accepted the dedication of that property and is not obligated to maintain it.

Councilor Felton asked about regular maintenance vs. restoring it.

Mayor Stearley clarified the portion that is bound by the covenants.

Mr. Rael asked if it was the developer's position that all potential homeowners are responsible for the maintenance of the road, unless or until the Town accepts the dedication.

Mr. Campbell stated yes.

Mr. Rael again discussed the private vs. public portion of the easement.

Mr. Campbell discussed the road being of adequate size.

Mr. Rael asked Mr. Campbell who is responsible for the 38' private easement.

Mr. Campbell stated that all 67 landowners were to share proportionately in the maintenance.

Mr. Campbell discussed improvements to the road.

Mr. Jensen discussed the developer's intention to change the covenants at the time of completion of the development of subdivision, as they would still be the majority landholders.

Mr. Jensen discussed the changes to the rules of the lots and roads over time and stated that at each step of the changes they were in compliance.

Councilor Felton discussed the fact that Rory Road was never accepted by the Town, for maintenance.

Mr. Jensen discussed the disclosure statements regarding their intentions for the subdivision that were in place at the time the Russell's purchased their property

Mr. Jensen clarified that the covenants require the developer to restore the road to pre construction condition.

Councilor Felton discussed the legal recourse if a homeowners association fails in its purpose to maintain the road.

Councilor Felton discussed the issue of paving when the development reaches more than 60 homes.

Mr. Jensen discussed development with fewer lots to avoid paving.

Councilor Felton asked some questions about the different phases of development.

Mr. Jensen discussed the stages of the appeal process and how paving would affect the development.

Mr. Rael asked about the use of the private easement by the other homeowners to access their properties.

Councilor Abrams asked about the easement and the continuation of the road through the subdivision.

Councilor Simmons discussed the incorporation of a homeowners association and if at that time the association could make a dedication of the easement and ask the Town to maintain it.

Mr. Jensen discussed the process required for the Town to accept the dedication.

Councilor Simmons clarified that the road is currently at the standards required by the Town for acceptance.

Mr. Rael asked if the 8 existing homeowners would be subject to the new covenants that the developers are proposing at the completion of the subdivision

Mr. Jensen stated that those 8 lots would not fall under the covenants.

Mr. Rael again attempted to clarify who would be responsible for the road maintenance in front of the four lots with the private easement.

Mayor Stearley stated that every lot should count towards the paving requirement.

Councilor Felton asked if it was possible to re-draw the subdivision to include the 8 lots.

Mr. Jensen stated that they could only do that with the approval all 8 owners.

Mr. Ullrich stated that it makes more sense to pave the entire road at one time.

Councilor Simmons clarified that if the 8 homeowners wanted to become part of the association they could.

Mr. Campbell stated that all 67 properties are bound by the covenants to pay their proportionate share of the maintenance.

Mr. Rael asked if Mr. And Mrs. Russell had any question for Mr. Campbell.

Mrs. Russell asked if we would ever be in a position of majority voting power on the decision of maintenance.

Mr. Russell asked what would be the proper language to describe the responsibility of road maintenance.

Mr. Campbell stated that it would read just as it did in the deed that was transferred to the Russell's.

Mr. Rael asked for testimony from Ms. Mahalick

Ms. Mahalick stated that she has been the Community Planning and Development Manager since 2002 and is familiar with the Ordinance No. 2005-14 and the Jensen-Ulrick Plat submittal SU 2007-10 Pueblo Artesanos.

Mr. Rael asked if the application complied with the Sub-Division Ordinance Section 10- A-1B.

Ms. Mahalick stated that it does

Mr. Rael asked if, in her opinion, the application complied with 10-A-3E

Ms. Mahalick stated that it does but asked if she could clarify that one for Council.

Ms. Mahalick stated that this comes under private way standards and those private way standards did not exist when the original plat of 2004 with the 4 lots was platted. So it was platted as a private road and it would not have complied with this ordinance

but it did comply back then. So their plat is in compliance.

Mr. Rael asked as a follow up if she was familiar with Section 8-C5?

Ms. Mahalick stated yes.

Mr. Rael asked what that section states.

Ms. Mahalick stated that 8-C5 is the Final Plat Approval/Disapproval and it reads if the final plat is in conformance with the preliminary plat, as approved, and conforms with these regulations, it shall be approved by the Planning and Zoning Commission. It does not say, it may be, it says, it shall be. The Planning and Zoning Commission found their Final Plat to be in full compliance with the ordinance.

Mr. Rael asked if the Planning and Zoning Commission approved the Plat.

Ms. Mahalick stated yes.

Mr. Rael asked if their decision was in accordance with Section 8-C5.

Ms. Mahalick stated yes.

Ms. Mahalick stated that the Planning Commission did approve the Plat and that it is her understanding that the road would serve all 67 lots, as platted, and this would make it subject to the paving requirements. Ms. Mahalick stated that the Planning Commission required the Subdivision to be paved at the completion of Pueblo Artesanos Phase II.

Ms. Mahalick stated that all homeowners in Pueblo Artesanos are subject to the covenants.

Mr. Rael asked for Ms. Mahalicks recommendation to the Council on this matter.

Ms. Mahalick stated the Council could require some further conditions such as paving the road now and including grading and drainage stipulation disclosure for clarity to future property owners.

Mayor Stearley asked for clarification of the boundaries of Phase I and if the Towns Ordinance allow for the Final Plat to be changed.

Ms. Mahalick stated that it could.

Ms. Mahalick stated that 67 lots are utilized by what is now Rory Road.

Ms. Mahalick stated that the Developer would have to vacate 7 lots to avoid paving.

Ms. Mahalick stated that the developer would have to work out a private agreement with the homeowners to improve or pave the road.

Councilor Simmons clarified that the requirement would be for the Developer to pave the road but in doing so, the Town is not accepting responsibility for maintenance.

Ms. Mahalick stated that it is the choice of the Developer to utilize the road and the Town is simply giving them a time frame.

Mr. Rael stated that the developer could improve and pave the entire road as long as they stay within the boundaries of the easement.

Councilor Felton asked if there have been concerns to date about the improvements that have been made.

Ms. Mahalick stated that there had been some concerns from the 8 property owners.

Mayor Stearley asked if the condition of final approval to pave be modified to specify that the whole road will be paved only when they start Phase II.

Ms. Mahalick stated that the Council could also require that the developer maintain the road throughout construction and that dust abatement be placed on the road as per the town standards.

Mr. Campbell discussed issues with paving before the completion of construction.

Ms. Mahalick stated that she did not see anything in the agreement that would require the developer to maintain or repair the road throughout the duration of construction of Phase I.

Ms. Mahalick stated that nothing had been finalized.

Mr. Jensen stated that their goal is to finish the job and not to drag this out indefinitely.

Ms. Mahalick stated that she feels it is in the best interest of the Town to require maintenance of the road by the Developers throughout the construction and that the developer pave the road at the completion of construction.

Mr. Rael discussed the Towns approval of the covenants that were submitted.

Ms. Mahalick stated that she had reviewed these covenants and that she was satisfied with them.

Ms. Mahalick stated that based on what has been said tonight it is the developer's intention to request that the Town take over maintenance.

Councilor Felton clarified that the homeowners in Pueblo Artesanos would be subject to 2 sets of restrictive covenants.

Mr. Rael asked if there were any more questions for Ms. Mahalick at this time.

Mr. Rael stated that under Section 10-15-1 H3 the Council has the ability to enter into a closed session.

MOTION: Councilor Felton made a motion to go into closed session.
Councilor Abrams seconded the motion.

VOTE: Councilor Abrams voted aye. Councilor Felton voted aye.
Councilor Simmons voted aye. The motion carried.

MOTION: Councilor Simmons made a motion to come into open session.
Councilor Abrams seconded the motion.

VOTE: Councilor Abrams voted aye. Councilor Felton voted aye.
Councilor Simmons voted aye. The motion carried.

Mayor Stearley stated that he would now ask for confirmation from Council that all that was discussed was the single agenda item.

Councilor Abrams confirmed this statement. Councilor Felton confirmed this statement. Councilor Simmons confirmed this statement.

MOTION: Councilor Felton made a motion to deny the appeal to the Pueblo Artesanos Phase I Final Plat Approval and accept the Final Plat with the following conditions:

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Initials

- Maintenance of the existing road and dust abatement continue from Horton Road throughout the subdivision back to Horton Road throughout the period of construction of both Phase I and Phase II.
- That the entirety of Pueblo Artesanos be paved prior to the Final Plat of Phase II and that the disclosure statement for Pueblo Artesanos be modified to state specifically that homeowners throughout the subdivision are responsible for a proportional share of the maintenance for the road, again, from Horton Road throughout the subdivision returning to Horton Road.

Councilor Abrams seconded the motion.

VOTE: Councilor Simmons voted aye. Councilor Felton voted aye. Councilor Abrams voted aye. The motion carried.

(ROLL CALL VOTE)

5. ADJOURN.

MOTION: Councilor Simmons made a motion to adjourn the meeting. Councilor Felton seconded the motion.

VOTE: All Councilors voted aye.

Mayor Stearley adjourned the meeting at 10:20 P.M.

ADOPTED AND APPROVED this 18th day of JUNE, 2008.

Honorable Robert Stearley, Mayor

ATTEST:

Estefanie B. Muller, Acting Administrator Clerk-Treasurer